

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts an amendment to Chapter 78, “Small Business Disaster Recovery Financial Assistance Program,” Iowa Administrative Code.

This amendment deletes the requirement that eligible businesses have “executed” loan documents for a disaster loan from an eligible lender prior to receiving assistance from this program. This amendment allows a business to apply for assistance if it can provide documentation to show that it has been approved for a disaster loan from an eligible lender. The amendment further provides that subrule 78.4(2) is retroactive to awards made on or after September 18, 2008 (the date this program began).

Original rules for this program, adopted by the IDED Board on September 18, 2008, required businesses to have received a disaster loan from an eligible lender. On September 26, 2008, the IDED Board adopted an amendment to the rules that changed and clarified a number of items. Among these items was an amendment to require businesses to have executed loan documents. The purpose of the amendment was to ensure that there was evidence of underwriting or the reasonable assurance of the viability of businesses that were damaged by the 2008 disasters and that applied for recovery assistance.

Guidance sent out from the state to local program operators and prospective businesses stated the requirements for businesses to be eligible to receive a disaster recovery loan. The guidance did not specify that the business must show proof that it had accepted the loan or executed loan documents. Review of the recipients for this program has shown that, while recipients had documented loan approval, the majority did not decide to accept the loan and therefore did not execute the loan documents. Federal officials have noted the discrepancy between documentation of loan approval and the rule requirement for executed loan documents. Federal officials have advised the Department that this discrepancy could result in disallowance of federal funds for the program.

The Department has reviewed the original rule, which required documentation of loan approval and sufficient evidence that a responsible lender had performed due diligence on the financial viability of the business and that the lender was prepared to underwrite the business. This assurance of due diligence was the purpose of the rule and the subsequent amendment. The rule change requiring “executed” loan documents had an unintended consequence. It was not the Department’s intent to require recipients to take on a loan they did not want.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because there is an immediate need to correct a provision that will enable federal funding to eligible businesses in the areas of the state that suffered damage due to the natural disasters in 2008. The public interest in the availability of federal funding to distribute outweighs the benefit of a comment period. The Department also finds that amendment of the rule retroactively confers a substantial benefit to the state and its businesses that were affected by the disasters of 2008 and that no businesses or other parties are adversely affected. The original rule which required documentation of loan approval from an eligible lender provided the assurance the Department sought for adequate due diligence prior to making a loan.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendment should be waived and the amendment be made effective upon filing with the Administrative Rules Coordinator on February 19, 2010. This amendment confers a benefit on the public by enabling federal funding for applicants in need of financial assistance for help with disaster recovery efforts.

The Iowa Economic Development Board adopted this amendment on February 18, 2010.

This amendment became effective on February 19, 2010.

This amendment is intended to implement Iowa Code section 15.109.

The following amendment is adopted.

Amend subrule 78.4(2) as follows:

78.4(2) The business has ~~executed loan documents~~ been approved for a disaster loan from an eligible lender. This subrule is retroactive to September 18, 2008.

[Filed Emergency 2/19/10, effective 2/19/10]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/10/10.